

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY HOYT,	)	
	)	
Plaintiff(s),	)	No. C10-1778 RS (BZ)
	)	
v.	)	
	)	<b>ORDER GRANTING DEFENDANTS'</b>
CITY AND COUNTY OF SAN	)	<b>MOTION TO COMPEL</b>
FRANCISCO, et al.,	)	
	)	
Defendant(s).	)	
_____	)	

Defendants have moved to compel plaintiff to provide further responses to defendants' interrogatories numbers 23, 24, and 25. Docket No. 54. Number 23 asks plaintiff to identify any health care provider that has treated him in the five years before the incident and the date of the treatment.<sup>1</sup> Numbers 24 and 25 ask plaintiff to identify the date of any bone fracture he has ever suffered and the identify of the health care providers who treated these fractures.


The Court agrees with defendants that the requested

---

<sup>1</sup> The parties have agreed that defendants' interrogatory will be limited to a period of five years rather than the initial request of ten years.

1 information is proper for discovery because preexisting  
2 medical conditions may be relevant to the jury's determination  
3 of whether defendant Officer Hank Lum's use of force was  
4 objectively reasonable in light of the circumstances  
5 confronting him. See Tatum v. City and County of San  
6 Francisco, 441 F.3d 1090, 1095 (9th Cir. 2006); Shelton v.  
7 Chorley, 2011 WL 1253655 at \*5 (E.D. Cal. 2011); Rodriguez v.  
8 Farrell, 280 F.3d 1341, 1352-52 (10th Cir. 2002) ("We do not  
9 use hindsight to judge the acts of police officers; we look at  
10 what they knew (or reasonably should have known) at the time  
11 of the act. What would ordinarily be considered reasonable  
12 force does not become excessive force when the force  
13 aggravates (however severely) a pre-existing condition the  
14 extent of which was unknown to the officer at the time"). **IT**  
15 **IS THEREFORE ORDERED** that plaintiff shall respond to  
16 interrogatory numbers 23, 24, and 25 by **June 15, 2011** to the  
17 extent that he knows the dates of his medical treatments and  
18 fractures and the identity of the health care providers that  
19 treated him.

20 Dated: May 31, 2011

21   
22 Bernard Zimmerman  
23 United States Magistrate Judge

24 G:\BZALL\REFS\HOYT V. CITY & CTY.S.F\ORDER RE DEFENDANT'S MOTION TO  
25 COMPEL.wpd  
26  
27  
28